

Respondent

v.

KEVIN CARSON

Appellant

STATEMENT OF ADDITIONAL

GROUND FOR REVIEW

I, Kevin Carson, have received and reviewed the opening brief prepared by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this Statement of Additional Grounds for Review when my appeal is considered on the merits.

**Additional Ground 1**

I feel I am entitled to a retrial because AMB was never sworn in before she testified. I made a point to my attorney at the table that I felt he should have objected. However, being a lay person without any legal knowledge or legal education, I was relying solely on the direction of my court appointed attorney, Josh Baldwin. I feel that he should have objected. The transcript says the following,

The Court: I did not administer an oath to the young lady. She's seven years old. I think it would be lost on her. Mr. Hayes covered the illustration about the flag and the promise to tell the truth. I feel that the purpose of the oath, which is to impress upon the person the need to tell the truth, I think that, was satisfied by the questions Mr. Hayes asked. Is there any objection to that? I would've had her respond to the following: Do you solemnly swear or affirm that the testimony you're about to give will be the truth, the whole truth, and nothing but the truth. I don't think she know what half of that means. But I'll give you the opportunity, in any event.

Mr. Baldwin: Yes, Your Honor. I noticed that, and then the State engaged in an inquiry or colloquy that covered truthfulness. I don't know that I have an objection under the circumstances. That being said, I'm sure that an appellate court will decide whether I should have.

The Court: That's right. And so the tendency would be for that to be a negative impression upon a jury because a person is not under oath. But my recollection is that with other youthful witnesses who won't necessarily appreciate the nuances of the formal oath, that the questioning by counsel for the State would be sufficient. Mr. Hayes, any comment?

Mr. Hayes: I would agree with that. I think when you're dealing with witnesses of a tender age, an official swearing in is not necessarily required. And even if some form of it was, I do think that the promise to tell the truth was elicited, which would cover every basis.

The Court: Okay. I find accordingly. You can bring the jury back in. I just wanted to make a record.

Mr. Hayes: Just for appellate record, the flag to which I was referring when I spoke to Amber is, in fact, green, yellow and black.

A child hearsay hearing was done prior to the trial to determine if AMB was competent enough to testify. According to the conditions listed under RCW 9A.44.120, if the court finds that the child's statements provide sufficient indicia of reliability, then the child testifies at the proceedings. It would seem that since the child hearsay hearing determined that she was competent enough to testify, then the oath should be required just as it is for any other individual that testifies. Every other person that testified in that trial was sworn in.

In addition, I feel my own attorney as well as the DA implied that I was guilty. First, Mr. Baldwin says that he would leave the decision of objecting up to the appellate court; there would only be an appellate court if I was found guilty. Second, the DA clarifies the flag colors for the appellate record.

I was truly at the mercy of my attorney to do what is in my best interest. I ask you, how am I supposed to know it would hurt me if he didn't object? His comment, about leaving it up to the appellate court clearly shows he knew he should have objected to AMB not being sworn in under oath. Her statement given to Cares Northwest was not given under oath. Since she was deemed competent to testify, she should have been given the oath just like anyone else who testifies is required to do.

### **Additional Ground 2**

It was stated that the charges filed against me on Counts 1 & 2 occurred on or about or between May 16, 2015 and August 28, 2018. However, during the testimonies of Charles Bertholomey and Morgan Cooksey both of them swore under oath that Amber had no issues before August 27, 2018. Based on their sworn testimonies regarding any issues Amber may have had; there is no basis for the 3 year span they claimed. In addition, it also shows that they committed perjury by giving false dates in their original report and then testifying differently.

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO**

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STATE OF WASHINGTON,	)	
	)	
RESPONDENT,	)	
	)	
v.	)	NO. 54136-0-II
	)	
KEVIN CARSON,	)	
	)	
APPELLANT.	)	

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**DECLARATION OF SERVICE**

I, MARIA ARRANZA RILEY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

ON THE 21<sup>ST</sup> DAY OF SEPTEMBER, 2020, I CAUSED A TRUE COPY OF THE **STATEMENT OF ADDITIONAL GROUNDS FOR REVIEW TO BE SERVED** ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] KRISTINE FOERSTER, DPA [kristine.foerster@clark.wa.gov] [CntyPA.GeneralDelivery@clark.wa.gov] CLARK COUNTY PROSECUTOR'S OFFICE PO BOX 5000 VANCOUVER, WA 98666-5000	( ) ( ) (X)	U.S. MAIL HAND DELIVERY E-SERVICE VIA PORTAL
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**SIGNED** IN SEATTLE, WASHINGTON THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2020.



X \_\_\_\_\_

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# WASHINGTON APPELLATE PROJECT

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## Transmittal Information

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